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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-202647.2

DATE: October 2, 1981

MATTER OF: James M. Smith, Inc. -- Reconsideration

**DIGEST:**

1. It is improper to require only a total bid price at bid opening and post-bid opening submission of and possible negotiation of unit prices under IFB for indefinite quantity contract, since unit prices are necessary at bid opening to set the material terms of contractor's obligation. That procedure, however, may be used if a fixed price contract is contemplated, since the Government's acceptance of the low bid would obligate the firm to provide the services listed for the stated period for which the Government would pay the total bid price. In that case, unit prices would not affect the contractor's obligation.
2. A bidder may alter prompt payment discounts for option years different from that offered for the base year where not precluded from doing so by IFB.

J.R.W. Enterprises, Inc. requests that we reconsider our decision James M. Smith, Inc., B-202647, June 17, 1981, 81-1 CPD 506, which concerned a protest by James M. Smith, Inc. against the proposed award of a contract to J.R.W. under invitation for bids (IFB) N62470-81-B-2759 issued by the Naval Facilities Engineering Command (NAVFAC). The IFB sought bids to furnish bus and taxi services at the Norfolk Naval Shipyard in Virginia. Smith, the second low bidder, contended that J.R.W.'s low bid should have been rejected as nonresponsive.

Our review of the record revealed what we saw as a fundamental defect in the procurement unrelated to whether or not J.R.W.'s bid was responsive, which rendered improper any award under the IFB. We therefore recommended that the solicitation be canceled.

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On reconsideration, we withdraw our recommendation. In addition, we find that J.R.W.'s bid was responsive to NAVFAC's invitation.

### Reconsideration

The defect to which we referred concerns the IFB requirement that bidders submit at bid opening only a total price for the seven line items of bus and taxi services required, but that the low bidder, within 10 days after bid opening, complete a Schedule of Prices for the seven line items and submit it for approval by the contracting officer.\* The approved Schedule of Prices would become a part of the contract on award, and would "provide the basis for payments and for any withholding." The IFB provided that unbalancing in the Schedule of Prices submitted after bid opening would be cause for withholding approval and requiring resubmission of a balanced Schedule, and might result in bid rejection.

In a decision issued five months before the instant IFB was issued, Garrett Enterprises, Inc., 59 Comp. Gen. 754 (1980), 80-2 CPD 227, we held that this same NAVFAC procurement method was improper. We held that the Navy should require the submission of unit line item prices with the initial bids for the following reasons:

- 1 - The contract to be awarded was an indefinite quantity-type with individual requirements to be purchased by the issuance of work orders as needs arose. The individual unit prices for each item, not the total price, therefore were to be the material terms of the contract, and the failure to establish them at bid opening was contrary to statutory requirements.
- 2 - The Navy's procedure permitted the low bidder the option to accept or reject an award, after bids were opened and prices exposed, merely by deciding whether or not to submit a completed Schedule or a balanced one.

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\*The line items are for each of three taxis and each of three buses, and for a dispatcher. The prices are the price per day for each of the line items.

- 3 - The Navy's reservation of the right to require a bidder to resubmit a balanced Schedule after bid opening in the event of unbalancing improperly contemplated negotiation in an otherwise formally advertised procurement.

In the reconsideration request, J.R.W. asserts that the contract that was to be awarded under the instant IFB was a lump-sum contract, in contrast to the indefinite quantity contract involved in Garrett Enterprises, where payment was to be based on the unit prices. J.R.W. argues that the parties' price agreement under a lump-sum contract is reflected in the total amount of the bid and is not affected by the unit prices set in the Schedule of Prices. J.R.W. suggests that the Schedule of Prices required under this IFB "is solely for the basis of making progress payments or for instituting withholdings in the event the contractor fails to perform the required services." J.R.W. thus argues that the concerns we expressed in Garrett Enterprises regarding the lack of any real obligation on the bidder at bid opening to perform any portion of the work at any particular price, and the bidder's ability to negotiate material terms of the contract after bid opening, do not apply here, where the scope of services is defined in the invitation and the payment for those defined services is fixed at bid opening. NAVFAC has furnished comments in support of J.R.W.'s position.

The nature of the contract that would be awarded in the instant procurement, as described by J.R.W. and NAVFAC, is not evident from the bidding materials. The General Provisions of the IFB include a clause which describes the contract to be awarded as a requirements contract, with services to be performed and paid for only as authorized by the issuance of delivery orders. On that basis, we assumed that NAVFAC was going to award a requirements contract, call for services by issuing orders, and pay for services ordered. Therefore, we found this procurement deficient for the same reason that the NAVFAC procurement in Garrett Enterprises was: the bidder's material contract obligation, which would be to provide daily service at a daily rate as ordered, and the Government's obligation, which would be to pay for the services ordered at the daily rate, improperly would not be established until the post-bid opening submission of a Schedule of Prices.

We viewed that situation as similar to the one in Garrett Enterprises. Under the indefinite quantity-type contract involved there, individual requirements would be purchased by issuing work orders and paid for based on the unit price for each item. Thus, the unit prices listed in the Schedule of Prices were the material contract terms, and the only relevance of the submission required at bid opening--the total bid price--was for the initial determination of the firm eligible for award. The three concerns with that procurement technique as expressed above clearly flow from that factor.

It appears, however, that NAVFAC intended by acceptance of a bid under the instant IFB to commit the contractor to provide bus and taxi service for a particular period at a stated total cost, notwithstanding the language in the General Provisions. The Schedule of Prices, therefore, would not contain the material contract terms. Whether or not the low bidder submitted a Schedule of Prices as required, the Government's acceptance of the bid would obligate the firm to provide the services for the stated period for which the Government would pay the total bid price. Evidently, all bidders understood the Government's intention in this respect, and thus were competing on the same basis.

Since the record now establishes that neither NAVFAC nor the bidders actually contemplated the type of requirements contract described in the IFB's General Provisions, we are persuaded by J.R.W.'s position that our concern with NAVFAC's procurement method as expressed in Garrett Enterprises is inapposite to the particular contract. Accordingly, we agree with J.R.W. that the IFB need not be canceled, and we reverse our June 17 decision.

By separate letter, however, we are recommending that NAVFAC use more care in the preparation of its bidding documents so that this type of situation can be avoided in the future. Also, it still is not apparent to us why NAVFAC believes it is either necessary or desirable to obtain a Schedule of Prices after bid opening in an advertised procurement, and we believe the practice should be discontinued.

#### Responsiveness of J.R.W.'s bid

Our conclusion requires us to consider whether J.R.W.'s bid was responsive to the IFB. We believe that the bid was responsive.

The IFB provided for a contract term of one year and included an option provision allowing the Government to renew the contract term for two one-year periods. Award was to be based on the evaluation of bids for the base year only.

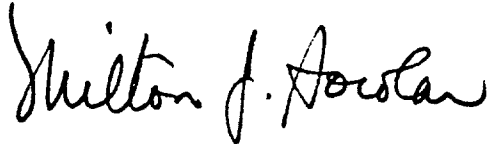
J.R.W. bid \$283,909.21 with a 5 percent prompt payment discount for the base year, and reduced the prompt payment discount for the option years so that it offered a 2 percent discount for the second 12 months and a 1/2 percent discount for the third 12 months. Smith's bid was \$309,960 with a prompt payment discount of 10 percent for the base and option years.

The Navy adjusted the base year bids by the appropriate prompt payment discounts, and determined that J.R.W. was low and thus entitled to the contract award. Smith argues that J.R.W.'s bid did not conform with the terms of the IFB because, by reducing its offered discounts for the option years, J.R.W. in effect submitted option year bids higher than the base year bid. Smith points out that when the discounts are considered J.R.W. would be low for the base and first option years, but Smith would be low for the second option year (\$278,964 for Smith; \$282,489.66 for J.R.W). Smith asserts that it could have bid lower than it did for the base year, which was evaluated for award, had it known that it was allowed to reduce its prompt payment discounts for the option years, effectively raising its option year prices over the base year price to recover any reductions in the base year price.

When a solicitation contains a level payment provision, requiring prices for the basic period and option periods to be the same, a bid which offers disparate pricing for the basic and option periods normally must be rejected. See Orlotronics Corporation, B-200382, April 22, 1981, 81-1 CPD 308. Here, however, there is no such solicitation provision. The IFB merely permits the Government to renew the contract term; it does not require the bidder to agree to the same pricing for the renewal term. Thus, we do not believe J.R.W.'s varying prompt payment discounts rendered its bid nonresponsive. We also do not believe Smith should have been prejudiced here as the IFB did not prevent Smith from bidding in a similar fashion.

Conclusion

Our June 17 decision recommending that the solicitation be canceled is reversed. In this respect, the Navy has delayed canceling IFB N62470-81-B-2759 pending our resolution of J.R.W.'s request that we reconsider that decision. Smith's protest that J.R.W.'s bid was not responsive is denied. Accordingly, award should be made to J.R.W. under the IFB, if otherwise appropriate.

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, stylized "M" and "F".

Acting Comptroller General  
of the United States